Exhibit 12

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

SUBJECT: Ability To Pay Analysis of Tonawanda Coke Corporation **DATE:** August 28, 2013

FROM: Leo J. Mullin, Cost Recovery Expert LJ Mul 8-28-2013
United States Environmental Protection Agency
Region III, Philadelphia, PA

TO: Laurie Dubriel, Associate qRegional Counsel for Criminal Enforcement
United States Environmental Protection Agency
Region II, New York, NY

The purpose of this memorandum is to respond to your request for an ability to pay ("ATP") analysis of Tonawanda Coke Corporation ("Tonawanda Coke") concerning the pending criminal sentencing proceeding.

In response to your request, efforts were made to obtain and review financial information concerning Tonawanda Coke. The review was done consistent with EPA's "General Policy of Ability to Pay Determinations" ("ATP Policy") that was issued on September 30, 1997 as well as Guidance on Determining a Violator's Ability to Pay a Civil Penalty (EPA General Enforcement Policy#GM-56) dated December 16,1986 ("Civil Penalty Guidance"). In summary, Tonawanda Coke does not have the ability make a payment in excess of $300,000,000 but based on the limited information that has been provided, Tonawanda Coke should be able to make a payment in excess of $57,000,000.00.

STANDARD FOR ABILITY TO PAY

The standard required by the Civil Penalty Guidance is extreme financial hardship. Extreme financial hardship is defined as payment that is so large that it is likely to cause a business to fail or cease to become competitive. In the civil context, if EPA is provided with reliable financial information so that EPA has a basis for determining that an extreme financial hardship is likely to occur, EPA has the ability to accept a settlement that will reduce the amount of the penalty to an amount that is not likely to create the financial hardship.

The standard used by the EPA ATP Policy is an undue financial hardship. This standard is similar to the Civil Penalty Guidance but it also looks at how the officers or directors of the business have impacted the company. In situations where the officers or directors have taken actions that have weakened the financial condition of the business, as opposed to when independent third party economic events have drained assets from a business, EPA may take these actions into consideration when determining the correct amount of the payment.

Both the ATP Policy and the Civil Penalty Guidance explain that the ability to reduce the amount of the environmental claim applies only to the penalty and the reimbursement of response costs. Injunctive relief costs that are required to prevent current and future business activities from releasing hazardous substances are seen as the cost of doing business and cannot be compromised.

With criminal sentencing matters, some courts have used a standard that asks if the full payment is within the capacity of the defendant. This standard is most often applied in matters that relate to restitution. Under this standard, the presumption is that only with the showing of compelling information that demonstrates that a hardship is imminent, will the payment be reduced.

All three standards start with the same elements, an examination of the financial condition of the liable party. If evidence is provided that the liable party has unencumbered assets that are not needed for the primary business purpose and the value of the unnecessary assets are greater than the amount of the penalty, then no reduction in the penalty is justified. The expectation is that absent a demonstration as to why a business needs these assets, they should be sold to pay for the environmental claim.

In addition to examining the assets and liabilities of a business, the income and expenses of the liable party is considered. The past is used to predict the future of the business. Expected annual revenues for a three to five year period of time are estimated. Expenses that fall within the definition of ordinary and necessary[1] are subtracted from these revenues. The resulting number is known as available income and it is also included in the amount that a business is expected to pay without incurring a financial hardship.

Of the three standards, extreme financial hardship generally imposes to the smallest payment requirement and the beyond one's capability standard that is used by some courts requires the highest payment. All three standards require a payment that is significant but not so great that the business will fail. Inherent in this calculation is the understanding that by reducing the amount required, the business will continue. This will provide employment to the community. The analysis also recognizes the interests of the shareholders of the business by allowing the shareholders to maintain their equity interest in the business and to receive distributions of profit after the three to five year delay.

SCOPE OF THE REVIEW

Tonawanda Coke was incorporated in New York State on January 13, 1978. The New York State Department of State, Division of Corporations identifies Tonawanda Coke's Chief Executive Officer as J.D. Crane.

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[1] Unless, EPA receives information that will document severe harm if a business delays or defers the purchase of new equipment, EPA does not consider non-cash expenses such as depreciation as a necessary expense when calculating available income.

Numerous documents were examined during the course of this ATP analysis. The documents that were relied upon for this ATP analysis include the following information:

- Monthly Internal income statement and balance sheet statements of Tonawanda Coke from March 31, 2005 to October 31, 2009.[2] The bates numbers for each document are included in attachment A.

- A document accessed by me on June 28, 2013, entitled "Company Briefs-Gale Group" for Tonawanda Coke Corporation that was provided by LexisNexis dated March 17, 2013.

- A Dun and Bradstreet, Business Information Report on Tonawanda Coke Corporation dated July 3, 2013.

- A document accessed by me on June 28, 2013, entitled "Company Briefs-Gale Group" for Erie Coke Corporation that was provided by LexisNexis dated March 16, 2013.

- A Dun and Bradstreet, Business Information Report on Erie Coke Corporation with a purchase date of May 7, 2013.

The internal financial statements appear to be trial balance documents and other initial working papers that are used by a company. These statements are preliminary documents. As a general practice, these statements are reviewed and adjusted by an accountant or tax professional prior to the final end of the year statements being prepared. Internal financial statements are helpful in understanding the day to day activities of a business but these statements are usually submitted along with annual federal income tax returns as well as the annual audited statements or an Accountants Review when EPA conducts an ATP analysis. The reason for these other documents is that federal income tax filings are assumed to be documents that comply with federal income tax laws. The standards required by the internal revenue tax code make the tax documents more reliable than internal financial statements. For the same reason, audited statements and accountant reviews require specific standards and information disclosures that are usually referred to as Generally Accepted Account Standards and Generally Accepted Auditing Standards.

Prior to EPA accepting the recommendation of an ATP Analysis, the financial analyst is asked to determine if the financial information is reliable from the perspective of determining a financial hardship. The information that has been provided does not meet this standard. A request for more reliable and more current information has been made by the Department of Justice but in the absence of additional information the conclusions that are reached in this memorandum assume that the financial information accurately reflects the financial condition of Tonawanda Coke.

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[2] Several Months of balance sheet and income statements are missing. The specific periods for which no information has been provided are the twenty one months from July 31, 2005 to March 31, 2007, the month ending February 28, 2009 and September 30, 2009.

STATEMENT OF QUALIFICATIONS

Page 6 of the EPA ATP Policy requires " the case team . . . to have available a team member who is qualified to express opinions on the financial information that is submitted." The following information should help to explain why I am capable of meeting this requirement.

I am a Cost Recovery Expert and have been employed by the United States Environmental Protection Agency ("EPA") in EPA Region III since October 1989. I am assigned to the Cost Recovery Branch of the Office of Enforcement of the Hazardous Sites Cleanup Division. My office is located at 1650 Arch Street, Philadelphia, Pennsylvania 19103. As part of my responsibilities, I review and make determinations with respect to businesses, individuals and municipalities settling on an ability to pay basis under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA").

From July 1982 until October 1989, I was employed by the Internal Revenue Service as a Revenue Officer. In my capacity as a Revenue Officer, I was responsible for collecting delinquent tax returns and delinquent taxes. This position required, on an almost daily basis, the assessment of the ability to pay of an entity to ensure that any enforced collection action would not create an unnecessary financial hardship.

I have a Bachelor of Arts in Politics from St. Joseph's University in Philadelphia, PA. My college courses include eighteen (18) credits in accounting and more than twenty (20) additional credits in other business courses. I have taken numerous courses on ability to pay sponsored by the Internal Revenue Service and EPA.

I have taught courses on ability to pay analysis for the Internal Revenue Service, EPA and the Department of Justice. These courses were designed for a variety of personnel and included ability to pay courses presented at national conferences held by EPA. I have also presented a training class on ability to pay at the Pennsylvania Environmental Law Forum. The audience for this class was the private bar.

I have participated in drafting proposed guidance documents and training materials within EPA that relate to ability to pay issues. I was the primary author of the EPA ATP Policy and I have assisted in briefing Senate staff members and various stakeholders, including small business and municipal groups, on ability to pay procedures utilized by EPA.

I have prepared many settlement recommendations and conducted hundreds of ability to pay analyses for the EPA. I have submitted my findings as they relate to ability to pay issues in numerous legal actions and have testified as to the ability to pay of defendants in actions involving EPA.[3]

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[3] Some of the matters where I have submitted testimony regarding ability to pay or where I have testified as an expert witness include Action Manufacturing Co., Inc., v. Simon Wrecking Co., Eastern District Pennsylvania : 02-CV-8964, United States Of America, v. Hercules Incorporated Et Al., Defendants Civil Action No. 89-CV-562-SLR, Municipal & Industrial Disposal Company v. Carol M. Browner, Western District Of Pennsylvania.. Civil No. 88-02631, United

Balance Sheet Phase

According to EPA's ATP Policy, the balance sheet phase should produce a dollar estimate that is the sum of: (1) excess cash; (2) funds available from the sale of assets that are not ordinary and necessary; (3) increased borrowing capacity; and (4) funds available from owners' equity.

Four full fiscal years of financial information was provided. This is for the fiscal years ending June 30, 2005, June 30, 2007, June 30, 2008 and June 30, 2009. The value of the assets and liabilities for those years are as follows:

Assets	**June 30, 2009**	**June 30, 2008**	**June 30, 2007**	**June 30, 2005**
Cash	$2,742,241.83	$316,865.24	$222,103.77	$1,978,085.85
Accounts Receivable	$3,346,598.53	$5,979,478.28	$4,015,232.15	$2,917,998.91
Inventory	$11,047,559.05	$8,088,196.55	$13,350,603.55	$8,129,245.44
Other Current Assets	$2,428,633.25	$2,737,979.80	$735,319.85	$1,052,156.64
Current Assets	**$19,565,032.66**	**$17,122,519.87**	**$18,323,258.21**	**$14,077,486.84**
Other Assets	$252,269.84	$416,651.95	$55,346.20	$1,497,831.10
Plant, Property and Equipments	$38,819,307.79	$36,842,536.35	$34,550,706.44	$32,337,619.40
Accumulated Depreciation	$24,776,483.09	$23,725,545.33	$22,747,341.17	$20,900,450.13
Net Value	$14,042,824.70	$13,116,991.02	$11,803,365.27	$11,437,169.27
Total Assets	**$33,860,127.20**	**$30,656,162.85**	**$30,181,969.98**	**$27,012,487.21**

Liabilities and Equity	**June 30, 2009**	**June 30, 2008**	**June 30, 2007**	**June 30, 2006**
Accounts Payable	$2,453,156.31	$3,372,644.96	$4,326,813.94	$4,478,007.75
Current Portion of Long Term Debt	$1,579,833.49	$666,833.45	$1,861,999.96	$515,990.95
Other Current Liabilities	$1,079,195.21	$1,112,996.98	$2,171,569.49	$224,930.53
Current Liabilities	**$5,112,185.01**	**$5,152,475.39**	**$8,360,383.39**	**$5,218,929.23**
Long Term Debt			$270,833.45	$531,237.04
Other Liabilities	$563,916.65		$896,000.00	$6,281,128.90
Total Liabilities	$5,676,101.66	$5,152,475.39	$9,527,216.84	$12,031,295.147
Shareholder Equity	$28,184,025.54	$25,503,687.46	$20,654,753.14	$14,981,192.04
Total Liability and Equity	**$33,860,127.20**	**$30,656,162.85**	**$30,181,969,98**	**$27,012,487.21**

States v. Nanticoke Homes Inc. of Greenwood Delaware, CR-91-23-LON (D. Del. 1991)

The working capital and equity position of Tonawanda Coke are much higher than is expected for a company that is in this industry. The equity or net worth of this business is exceptionally high. Dun and Bradstreet indicates that the average ratio for liability to net worth is $120.00 in debt for $100 dollars in equity. For Tonawanda Coke for every $100 in debt there is almost $500 in equity. This may indicate that Tonawanda Coke has significant assets that could be converted to cash. However, since these are only internal financial statements[4], absent additional information from the shareholders, officers or directors, this analysis does not include any estimate in the ability to pay that relates to the Asset Phase of the Analysis.

Income and Cash Flow Statement Phase

The Civil Penalty Guidance suggest that a company can do without profit and without purchasing new equipment for a limited period of time that is normally within a range of three to five years. ATP Policy is more definitive in this calculation by requiring a review of the earnings of a company or an individual and to determine if future earnings could be used to fund a settlement, or if funds that are designated for future expenses could be curtailed or deferred and used instead for the payment of the environmental claim. This requires a calculation of the difference between the projected revenues and ordinary and necessary expenses ("Available Income"). The Available Income is then compared with the environmental claim. If the Available Income is greater than the environmental claim, there is no undue financial hardship and no reduction based on an ATP claim should be allowed. If Available Income is less than the settlement amount, the Available Income should be included with the ATP estimate.

The major elements of the income statement for Tonawanda Coke are as follows:

	Four Year Average	**June 30, 2009**	**June 30, 2008**	**June 30, 2007**	**June 30, 2005**
Gross Sales	$63,391,906	$72,636,593.34	$77,427,971.19	$50,150,326.37	$53,352.734.28
Taxable Income	$12,836,173	$19,043,337.99	$12,967,934.32	$9,427,200.09	$9,906,219.54
Tax Expense	$2,382,500	$3,863,000.00	$1,369,000.00	$1,955,000.00	$2,343,000.00
Depreciation Expense	$974,661	$1,050,937.76	$978,204.16	$965,429.40	$904,072.11
Cash Flow	**$11,428,334**	**$16,231,275.75**	**$12,577,138.48**	**$8,437,629.49**	**$8,467,291.65**

Absent more information that would allow EPA to understand better the basis for the information that has been provided by the internal financial statements, no adjustments to these amounts have been made. Additional information that would be helpful would include information such as the existence of related party transactions as well as the impact on the production capability of the business if there is a delay in reinvestment. Without this additional

[4] Generally, officials of a company would explain the procedures involved with creating monthly internal financial statements. These same officials would also explain any unusual events. For example, the financial statement for February 28, 2009 has not been provided. Between January 31, 2009 and March 31, 2009, approximately $6,000,000 in equity left Tonawanda Coke and there is no explanation for this transaction.

information the preliminary finding is that Tonawanda Coke has the ability to contribute five years of future cash flow in resolution of its environmental claims. The average for the four years is $11,428,334 which produces a total ability to pay of $57,141,699. Generally, this amount is adjusted using a discount rate as well as a weighted average that would place a greater emphasis on the most current years. The use of a discount rate would decrease the total payment but using a weighted average, since the most profitable year is 2009, would increase the amount of expected earnings. Since one lowers the estimate and the other increases the estimate for purposes of this analysis, the unadjusted average is used.

Additional Comments

One public information source estimated the following information for Tonawanda Coke as follows:

Year	Sales	Source	Employees
2011	$21.1m	Company Information	130
2010	$61 m	Company Information	130
2009	$149.4m	Company Information	130
2008	$149.4m	Company Information	130
2007	$149.4m	Company Information	130
2006	$149.4m	Company Information	130
2005	$149.4m	Company Information	130

Tonawanda Coke has a sister company that is known as Erie Coke. The same information source provides the following information about Erie Coke:

Year	Sales	Source	Employees
2011	$19.4 m	Company Information	130
2010	$19 m	Company Information	130
2009	$19.3m	Company Information	130
2008	$19.3m	Company Information	130
2007	$50.5m	Company Information	130
2006	$50.5m	Company Information	130
2005	$50.5 m	Company Information	130

Based on my experience these types of information services are helpful from the perspective of estimating the general size of a business but these estimates are rarely accurate. The reason why they are mentioned in this report is that they are helpful in assessing the reliability of the internal financial states which is all that EPA has available to it.

The sales numbers for Tonawanda Coke that are identified in this report are almost twice the sales that are listed in the internal financial statements. One possible reason for this is that the internal financial statements may reflect the financial position of only a specific product line or some other portion of the revenues earned by Tonawanda Coke. Due to this, if more reliable information is provided, it may indicate that gross revenues and net income are much higher.

Equally important is the information about Erie Coke. As a result of discussions with several people who work for the Pennsylvania Department of Environmental Protection (PADEP Staff), information was provided about a settlement of environmental claims that relate to the Erie Coke Facility. Although the PADEP Staff were not provided with any internal or external financial statements that relate to Erie Coke, the PADEP Staff were able to explain that in 2010 a settlement was reached with Eire Coke and J. D. Crane. As a result of that settlement a penalty payment of approximately $4,000,000 was paid and an additional $2,000,000 was paid and is held by PADEP as a financial guarantee. The payments were made by checks in the name of Erie Coke. Also, Erie Coke agreed to implement a series of environmental improvements that have a value in excess of $15,000,000 resulting in a total obligation of approximately $21,000,000. The cost of this environmental work was to be incurred in a three year window of time. According to PADEP, Erie Coke has complied with the general terms of this commitment. Also, according to the PADEP Staff, as a result of these environmental improvements, there are efficiencies in the plant processes that should allow for increased profitability.

This information is helpful in evaluating the impact of Tonawanda Coke for several reasons. First, assuming the annual sales of Erie Coke are accurately described at $19,000,000, the value of the PADEP settlement was almost equal to one year's total revenue. Erie Coke agreed to this commitment, it complied with the requirements of this agreement and Erie Coke still operates with 130 employees. According to PADEP Staff, the capacity of Tonawanda Coke may be greater than the capacity of Erie Coke. If this is true, a payment of $57,141,699, should be within the capability of Tonawanda Coke, because if Erie Coke could agree to pay one years of gross revenues over a three year period, Tonawanda Coke should be able to pay less than one years gross revenues over a five year period of time.

Conclusion

The conclusion of this analysis is that more reliable information would be helpful. In light of Tonawanda Coke's unwillingness to provide this information to the criminal prosecutors at the Department of Justice, and based on the limited information that has been provided, Tonawanda Coke has the ability to pay at least $57,141,699.

Attachment A

Bates Number for Income Statement Documents used in the Tonawanda Coke Matter

TCC00132322	TCC00132600	TCC00132865	TCC00130431	TCC00130113	TCC00130390
TCC00138278	TCC00138567	TCC00138882	TCC00139190	TCC00017682	TCC00017970
TCC00018232	TCC00116022	TCC00116295	TCC00116652	TCC00116899	TCC00117218
TCC00117452	TCC00033619	TCC00033233	TCC00032482	TCC00032108	TCC00031821
TCC00031425	TCC00031139	TCC00030803	TCC00028727	TCC00028398	TCC00142796
TCC00143152	TCC00009684	TCC00008960	TCC00151505	TCC00151505	TCC00151515
TCC00007748					

Bates Numbers for the Balance Sheet Statements used in the Tonawanda Coke Matter

TCC00132320	TCC00132598	TCC00132864	TCC00130429	TCC00138276	TCC00138565
TCC0138880	TCC00139188	TCC00017680	TCC00017968	TCC00018230	TCC00116020
TCC00116294	TCC00116650	TCC00116897	TCC00117217	TCC00117450	TCC00033617
TCC00033231	TCC0032480	TCC00032106	TCC00031819	TCC00031423	TCC00031137
TCC00030801	TCC00028725	TCC00028396	TCC00142794	TCC00143150	TCC00009682
TCC00008958	TCC00009348	TCC00151503	TCC00151513	TCC00007746	